the guise of the police regulation, when it is not such in fact. *Viemeister v. White,* 179 N. Y. 235.

Legislative powers, the exercise of which can only be justified on the ground of the police power, and are otherwise unconstitutional, can be such only as are absolutely required for the safety, comfort or necessities of the public, and which the framers of the Constitution, as men of ordinary prudence, cannot be supposed to have intended to prohibit, despite the language of the prohibition. *People v. Jackson, etc.,* 9 Mich. 285. But it is the province of the court finally to determine, in case of conflict of the police power and the Constitution, whether there has been a valid exercise of the police power, and whether the power of the state to legislate, or the right of the individual to freedom of contract, shall prevail.

Were this right of review by the courts to be denied, where constitutional guaranties are involved; should the legislature be the sole judge of what the public welfare meant, they could prescribe what the people should eat and drink, and what political, moral and religious creeds they should believe in, all for the public good. But this is not the case, for over the people of the state hangs the shield of written constitutions, which are the supreme law, which our legislators are sworn to support, which grant a restricted legislative power, within which the legislators must limit their action for the public welfare, and whose barriers they cannot overleap under any pretext of supposed safety of the people; for along with our written constitutions we have a judiciary, created by them a co-ordinate department of the government, whose duty it is, as the appropriate means of securing to the people safety from legislative oppression, to annul all legislative action without the pale of those instruments. This duty of the judicial department, in this country, was demonstrated by Chief Justice Marshall, in *Marbury v. Madison,* 1 Cranch 137, and has since been recognized as settled American law. *Beebe v. The State,* 6 Ind. 507-508. In case of conflict, the temporary will of the people contained in the law, must yield to the paramount will of the people contained in the Constitution. *Beebe v. State,* 6 Ind. 527.

STEAMSHIP TICKETS—CONDITIONS LIMITING LIABILITY.

There has been considerable conflict in the New York courts upon the question of carriers limiting their liability. Cases may be cited favoring nearly every possible attitude toward this subject.

The case of *Tewes v. North German Lloyd Steamship Co.,* reported in 73 N. E. 864, is of interest as tending to fix the New York rule. Here there was loss of baggage through negligence of carrier, a steamship company. The ticket of passage contained conditions limiting the company's liability for the loss or injury to or delay in delivery of baggage to an amount not exceeding $50. Nothing was said in reference to negligence of the carrier. The passenger did not notice the conditions or have his attention especially called to them. The court held, that a ticket for an ocean voyage is a contract, that the fact that the conditions on the ticket were

not brought especially to the notice of the passenger would not relieve him from the enforcement of those conditions by the company. This view was based on *Steers v. Liverpool N. Y. & P. S. S. Co.*, 57 N. Y. I. and *Wheeler v. Oceanic Steam Nav. Co.*, 72 Hun. 5.

Johnson, C., in his opinion in the Steers case, says: "Looking to the course of business the court may take notice that engagement for voyage across the ocean is a matter of more deliberation and attention than buying a railroad ticket or taking an express company's receipt for baggage or for freight." This attitude seems to be strongly fixed in New York by being practically reiterated in *Wheeler v. Oceanic Steam Nav. Co.* and now in *Tewes v. North German Lloyd S.S. Co.* The same spirit is evident in the other question in the Tewes case, where the divided court held that conditions in a ticket (granting notice to passengers) were sufficient to limit carrier's liability to the amount specified even though loss of baggage occurred through ordinary negligence on part of carrier. Cullen, C. J., and Haight, J., dissenting. The amount to which liability is limited is construed as an agreed valuation and thereby the passenger is estopped from recovering full value in case of loss. Not that the company is relieved from liability for its negligence, but that the passenger has, by his acceptance of the ticket, limited his right to recover. *Magnin v. Dinsmore*, 75 N. Y. 410. In the present case Justice Haight dissented, maintaining that such ticket stipulations only operated to relieve the carrier from its strict common law liability and not from its obligation to exercise proper care as a bailee. *Rathburne v. N. Y. N. H. & R. Co.*, 140 N. Y. 48. The gist of the dissent is well expressed in the words of Gray, J.: "The rule is firmly established in this state that a common carrier may contract for immunity from its negligence or that of its agents, but that to accomplish that object the contract must not be left to presumption from its language. Considerations based upon public policy and the nature of the carrier's undertaking influence the application of the rule and forbid its operation except where the carrier's immunity from the consequences of negligence is read in the agreement *ipsissimis verbis.*" *Kenny v. N. Y. C. & H. R. Co.*, 125 N. Y. 422.

The Federal courts and most state courts generally favor protecting the passenger, who is always more or less at the mercy of the carrier. *R. R. Co. v. Lockwood*, 17 Wall. 357. In two recent cases decided by Federal courts in New York it was held that a passenger cannot be held to conditions on a ticket of passage where his attention had not been called to such conditions and he had no knowledge of them. *The Minnetonka*, 146 Fed. 509; *Weinberger v. Compagnie Generale Atlantique*, 146 Fed. 516. The U. S. Supreme Court does not seem to draw the distinction betweeen railroad and steamship tickets. Limited liability stipulations are treated as in the nature of subterfuges on the part of the carrier and are jealously scrutinized. Chief Justice Fuller says in *The Majestic*, 166 U. S. 375, "We quite agree with Lord O'Hagan in *Henderson v. Stevens* that when a company desires to impose special and most stringent terms upon its customers, in exoneration of its own liability there

is nothing unreasonable in requiring that those terms shall be distinctly declared and deliberately accepted."

TRANSFER TAX; ASSESSMENT OF SHARES OF STOCK IN A CORPORATION ORGANIZED UNDER THE LAWS OF TWO STATES.

In appraising the value of shares of stock to ascertain the amount of tax to be imposed under the New York transfer tax law, an interesting question was presented to the Court of Appeals of that state in the case of *Charles P. Cooley, et al. as executors v. The Comptroller,* 78 N. E. 939. The law provides for a tax upon the transfer by will or intestate law of any property or interest therein over a certain value when the decedent is a non-resident of the state at the time of his death. In this case the decedent was a resident of Connecticut. He transferred by will shares of stock in the Boston and Albany Railroad Company, a consolidated corporation organized under the laws of both New York and Massachusetts. The question presented to the court was whether in making the assessment the state of New York should recognize the full value of the shares held by the decedent, or whether it should limit the tax to a portion of the total value upon the theory that the company holds its property in Massachusetts at least under its incorporation in that state.

It would seem by an examination of former decisions rendered by the New York courts that a conclusion could be reached without much difficulty. Though this precise question had not previously been presented, yet in the late case, *In re Palmer's Estate,* 76 N. E. 13, it was said by Judge Gray that a share of capital stock represents the distinct interest which its holder has in the corporation. That his right to participate in the distribution of the net earnings of the corporation as a going concern or in its assets upon dissolution, is proportionate to the number of shares which he holds; these evidence the extent of his proprietary interest and their assessment for taxation purposes must be upon that interest regarded as an entity and is unapportionable with reference to the *situs* of the corporate properties. Adding to this opinion of Judge Gray the fact that a consolidated corporation organized under two or more states, by seeking the aid of the laws of New York and being incorporated thereunder, is considered a domestic corporation therein (*Matter of Sage, et al.,* 70 N. Y. 220), it would seem that the same result must follow in the assessment of this present tax as where shares are held in a corporation incorporate alone under the laws of New York and holding property outside the state. *In re Bronson,* 150 N. Y. 1. The court, however, adopted a contrary doctrine which seems to be based upon the equitable view that otherwise stockholders would be subjected to hardship. It is pointed out that if New York levied a tax assessed upon the full value of the shares, the other states of incorporation might do the same, resulting in double taxation. Such taxation courts should avoid whenever it is possible within reason to do so and all presumptions are against its imposition. *Tennessee v. Whitworth,* 117 N. S. 129. "The law of